



703 - FAMILY MEDICAL LEAVE ACT POLICY (FMLA)

I. GENERAL

The City of Newport News will grant up to 12 weeks of job protected leave (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees.

The purpose of this policy is to explain the types of leave covered by FMLA and how FMLA leave should be administered within City policy. In case of conflict between City policy and FMLA, the provisions of FMLA will supersede City policy, unless City leave policies are more generous than FMLA. It is the intent of this policy to apply, without deviation, the provisions of the FMLA and its regulations (29 CFR Part 825). The provisions of the FMLA have been incorporated here in summary fashion for ease of use. However, the City's intent is not to provide more generous provisions unless clearly stated, and the FMLA should control. Contact the Department of Human Resources regarding questions or situations not covered by this policy.

II. DEFINITIONS

- **Covered Active Duty or Call to Covered Active Duty Status** – As it relates to leave for a qualifying exigency, the term, “covered active duty or call to covered active duty status,” means: in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country and in the case of a member of reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)B) of Title 10, United States Code.
- **Child** – As it relates to leave taken for birth or placement for adoption/foster care, or to care for a family member with a serious health condition, child means a biological, adopted or foster child, a stepchild, a legal ward, or a child in the custody of a person standing in the place of a parent. The child must either be under age 18, or be 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.
- **Covered Service Member** - For purposes of military caregiver leave, a covered service member means (A) a member of the Armed Forces (including a member of the National Guard, or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five (5) year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. (For covered

- veterans discharged prior to 2-6-2013, the period between 10-28-2009 and 2-6-2013 shall not count towards the five (5) year period.) The service member must be receiving medical treatment or oversight by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider. The eligible employee must be the spouse, son, daughter, parent or next of kin of a covered service member.
- **Health Care Provider** – Includes physicians, osteopaths, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, physician’s assistants, Christian Science practitioners, and any health care provider that is recognized by the City of Newport News group health insurance plan as a health care provider. Generally, health care providers must be performing within the scope of their practice as defined under state law. Health Care providers for military caregiver leave for covered service members includes providers who are not affiliated with Department of Defense (DOD), Veterans Affairs (VA), or TRICARE.
 - **Incapacity** – Means inability to work, attend school, or perform other regular duty activities due to the serious health condition, treatment or recovery.
 - **Intermittent Leave** – Leave that is taken periodically for a few hours a day or for a few days, from time-to-time, on an as-needed basis, due to a single qualifying reason. As with PPL and PML, leave is available in increments of 15 minutes, and the minimum which can be taken at one time is 15 minutes.
 - **Job Protected Leave** – The employee is guaranteed the right to return to his/her former position or an equivalent job following FMLA leave.
 - **Next of Kin** – As it relates to the care of a covered service member, next of kin is the nearest blood relative other than the spouse, parent, son or daughter. Next of kin is determined in the following priority order unless another blood relative has been specifically designated for this purpose: blood relatives who have been granted legal custody of the service member, brothers and sisters, grandparents, aunts and uncles, and first cousins. When there are multiple family members with the same level of relationship to the covered service member, all such family members are considered the next of kin and may take FMLA leave to provide care to the service member, either consecutively or simultaneously.
 - **Parent** – A biological, adoptive, step or foster father or mother, or individual who stood in the place of a parent to the employee (or service member) and was charged with the duties and responsibilities of a parent. In-law relationships are not included.
 - **Qualifying Exigency** – A qualifying exigency is a non-medical, non-routine activity that is directly related to the covered military member’s covered active duty or call to covered active duty status. Examples include attending certain military events,

such as official ceremonies, programs, or events; providing or arranging for alternative childcare on an urgent basis, addressing certain financial and legal arrangements, attending certain counseling sessions, attending post-deployment reintegration briefings, and parental care leave which includes arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility or attending meetings with staff at a care facility.

- **Reduced Leave Schedule** - A leave schedule that involves a reduction in the number of hours normally worked per workweek or per workday.
- **Son or Daughter** - As it relates to military family leave, a son or daughter means the employee's biological, adopted or foster child, stepchild, legal ward, or a child for whom the employee stood in place of the parent, regardless of age.
- **Spouse** - The employee's husband or wife as defined or recognized in the state where the individual was married and includes same-sex marriage.

III. GENERAL PROVISIONS

- A. Eligibility Requirements** - To qualify to take any type of FMLA leave, the employee must meet all of the following conditions.

1. The employee must have been employed by the City for at least 12 months. Separate periods of employment will be counted, provided that the break in service does not exceed seven years.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date that leave is requested to commence.

An exception to the eligibility requirement exists for any employee who has been on active duty military or the reserves and would otherwise have been eligible for FMLA leave. All periods of absence from work due to or necessitated by the Uniformed Services Employment and Re-employment Rights Act (USERRA) is counted in determining an employee's eligibility for FMLA leave for both the 12 month length of service and 1,250 minimum hours worked requirement.

Should an employee meet the eligibility requirements while out on leave for a FMLA-qualifying reason, any leave taken for a FMLA-qualifying reason after meeting the eligibility requirements is counted as FMLA leave.

- B. Types of Leave Covered**

1. **Family/Medical Leave Entitlements** - Eligible employees may take FMLA leave for any one or combination of the following reasons:

- a. For the birth and care of a newborn child of the employee.
- b. For placement of a child for adoption or foster care with the employee.
- c. To care for the employee's spouse, child or parent with a serious health condition.
- d. Due to a serious health condition of the employee that makes the employee unable to perform any or one of the essential functions of the employee's position.

2. Military Family Leave Entitlements

- a. Qualifying Exigencies – A qualifying exigency is a non-medical, non-routine activity that is directly related to the covered military member's covered active duty or call to active duty status. To be eligible, the employee must have a spouse, parent, son or daughter on covered active duty to a foreign country or call to covered active duty status in the Armed Forces or reserve component of the Armed Forces in support of a contingency operation to a foreign country. There are nine (9) categories of qualifying exigencies in the FMLA regulations:
 1. Short-notice deployment activities (up to seven (7) days of leave is permitted if the military member receives seven (7) or less days' notice of a call to active duty);
 2. Military events and related activities;
 3. Certain temporary childcare arrangements and school activities (but not for ongoing childcare or routine academic concerns);
 4. Financial and legal arrangements;
 5. Counseling by a non-medical counselor (such as a member of the clergy);
 6. Rest and recuperation (up to a maximum of fifteen (15) calendar days of leave is permitted when the military member is on temporary rest and recuperation leave);
 7. Post-deployment military activities (such as arrival ceremonies or reintegration briefings);
 8. Parental care (when the parent of the military member is incapable of self-care); and
 9. Additional activities which arise out of the military member's covered active duty or call to active duty status provided that both the City and employee agree that such leave shall qualify, and agree to both the timing and duration of such leave.

- b. Military Caregiver Leave – FMLA leave may be granted to an eligible employee to care for a covered service member, who is on the temporary disability retired list and has a serious injury or illness. The covered service member must be undergoing medical treatment, recuperation or therapy, otherwise be in outpatient status, or otherwise be on the temporary disability retired list. To be eligible for this leave, the employee must be the spouse, son, daughter, parent, or next of kin of the covered service member.
- C. Amount of Leave – Eligible employees may take up to a total of 12 workweeks of FMLA leave during a calendar year, when leave is taken for any one or combination of FMLA-qualifying reasons, not including military caregiver leave. For regular full-time employees, 12 workweeks of leave equates to 480 hours (674 hours for 24-hour Fire employees). For qualifying part-time employees, leave is calculated using an equivalent of the employee's regular work schedule.

Except for military caregiver leave, each time FMLA leave is taken, the employee's remaining FMLA leave entitlement is any remaining balance of the 12 workweeks that has not been used during the calendar year in which the leave was taken.

As with PPL and PML, FMLA leave is available in increments of 15 minutes, and an employee may not be required to take more leave than necessary to address the circumstances that precipitated the need for leave.

1. Amount of Leave for Military Caregiver Leave – For military caregiver leave only, up to a total of 26 workweeks of leave may be taken in a single 12-month period when combined with other FMLA qualifying leave. The 26 workweeks of leave equates to 1,040 hours for regular full-time employees (1,460 for 24-hour Fire employees). For purposes of military caregiver leave only, the 12-month period begins on the first day the employee takes military caregiver leave and ends 12 months later.

When military caregiver leave is taken in combination with other FMLA qualifying reasons, only 12 weeks of the total may be for reasons other than the care of the covered service member.

2. When Both Spouses Work for the City - FMLA limits leave entitlement to a combined total of 12 (or 26) workweeks when both spouses are employed by the City and leave is taken for the birth and care of a newborn child, placement of a child for adoption or foster care, to care for a parent who has a serious health condition, or to care for a covered service member with a serious injury or illness. (Additional, non-FMLA leave time may be granted within City policy at the discretion of the designated manager.) Each employee would be entitled to the remaining amount of FMLA leave for other FMLA-qualifying events such as the case for a child with a serious health condition or due to one's own serious health condition.

3. Time Limitation When Leave is taken for Birth/Placement - Leave for birth and care of a newborn, or the placement for adoption or foster care must conclude within 12 months of the birth or placement.
- D. Intermittent/Reduced Schedule Leave - An eligible employee may use FMLA leave intermittently (hours/days are taken periodically over a period of time) or, under certain circumstances, use the leave to reduce the workweek or workday, resulting in a reduced hours schedule. Intermittent or reduced schedule leave may be taken when medically necessary due to the serious health condition of a covered family member or the employee, the serious injury or illness of a covered service member, or for a qualifying exigency. If the leave is for planned medical treatments, the employee must make a reasonable effort to schedule treatments so as not to unduly disrupt City or department operations. Intermittent or reduced schedule leave may also be granted after the birth or placement for adoption/foster care of a healthy child, but only at the option of the employee's department. When leave is taken intermittently or on a reduced schedule basis, the employee is only required to give notice of the need for leave one time unless the dates of scheduled leave change or were initially unknown.
- E. Posters - Each department is responsible for ensuring that FMLA posters are posted in conspicuous places at each work site. Posters may be obtained from the Department of Human Resources.
- F. Protection for Employees Who Request Leave - Managers shall not consider leave taken under FMLA as a negative factor in any personnel actions, including attendance ratings. Moreover, the FMLA prohibits interference with an employee's right under the law and with legal proceedings or inquiries relating to an employee's rights as set forth in the federal regulations.

IV. SERIOUS HEALTH CONDITION

Under FMLA, a serious health condition is any illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

- A. Inpatient Care - Means an overnight stay in a hospital, hospice, or residential medical care or any subsequent treatment in connection with the inpatient care.
- B. Continuing Treatment by a Health Care Provider - Means any one of the following:
 1. Incapacity/Treatment - A period of incapacity of more than three (3) consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves either treatment two or more times within 30 days, or treatment by a health care provider on

at least one occasion, which results in a regiment of continuing treatment under the supervision of the health care provider.

2. Pregnancy/Prenatal Care - Any period of incapacity due to pregnancy or for prenatal care. In these situations, FMLA also covers leave for the husband, if needed to care for the pregnant spouse who is incapacitated due to severe morning sickness or other prenatal complications (and may need physical care) and to accompany her to prenatal doctor's appointments (and may need to be driven or need psychological care).
 3. Chronic Conditions - Any period of incapacity or treatment for incapacity due to a chronic serious health condition such as asthma or diabetes. Chronic conditions require periodic visits (at least twice a year) for treatment by a health care provider, continue over an extended period of time, and may cause episodic rather than a continuing period of incapacity.
- C. Permanent/Long-Term Conditions - A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke, or the terminal stages of a disease. The patient must be under the continuing supervision of a health care provider, but need not be receiving active treatment.
- D. Conditions Requiring Multiple Treatments - Any period of absence to receive or recover from multiple treatments, such as for restorative surgery after an injury, or for serious conditions such as cancer (chemotherapy) or kidney disease (dialysis) that would likely result in a period of incapacity of more than three (3), consecutive, full calendar days in the absence of medical intervention or treatment.
- E. Incapacity and Subsequent Treatment - The inability to work, attend school or perform other regular daily activities due to the serious health condition or the treatment or recovery as a result of the serious health condition.
- F. Serious Injury or Illness for Covered Service Member - The term serious injury or illness, in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.
- G. Serious Injury or Illness for Covered Veteran - A serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is: (1) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform

the duties of the service member's office, grade, rank or rating; or (2) A physical or mental condition for which the veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for the caregiver leave; or (3) A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of disability or disabilities related to military service or would do so absent treatment; or (4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

V. REQUESTS FOR FMLA LEAVE

FMLA leave should be requested in accordance with applicable City and departmental guidelines and policies and as soon as the employee knows that leave will be needed. An employee does not need to expressly assert his/her FMLA rights for an absence to be covered by FMLA. However, sufficient information must be provided to the city's FMLA (absence management) provider to determine if the leave qualifies for FMLA protection and the anticipated timing and duration of the leave. If sufficient information is not provided, the employee will be contacted to inquire further as to the reason for leave.

In the event an employee has a need to extend or alter their previously-designated FMLA leave, they are required to notify the absence management provider as soon as practicable and to provide documentation supporting the need for additional leave.

FMLA covered leave that has been properly requested cannot be denied to eligible employees.

VI. NOTICE OF ELIGIBILITY AND RIGHTS AND RESPONSIBILITIES

When an employee requests FMLA leave or the manager is informed that leave may be for a FMLA purpose, the city's absence management provider is responsible for completing and sending the employee a "Notice of Eligibility and Rights & Responsibilities" form within five (5) working days, even if the employee does not meet FMLA eligibility requirements. However, if the employee is not eligible for FMLA leave, the notice must state the reason. The "Notice of Eligibility and Rights & Responsibilities" document will inform the employee of any requirement to provide certification of the need for leave and will explain other rights and responsibilities that the employee will have while on FMLA leave.

VII. CERTIFICATION OF THE NEED FOR LEAVE

The city's absence management provider may require certification of the need for any FMLA leave. The employee will be informed of the requirement for a certification when the employee requests leave, or within five working days, if the leave is unforeseen. The

requirement for a certification will be documented on the "Notice of Eligibility and Rights & Responsibilities" document. Certification may also be requested at a later date, if there is reason to question the appropriateness of the leave or its duration. The employee must return the completed certification (and any recertification) to the city's absence management provider within eighteen (18) calendar days, unless not practicable under the circumstances. Failure to return a certification may result in the denial of leave.

- A. **Certification of Leave for Medical Purposes** - Under City policy, an FMLA "Certification of Health Care Provider" form is required from any employee whose absence for personal or family medical reasons exceeds five (5) consecutive work days (three (3) consecutive duty days for 24-hour Fire), but may also be required for leave of any duration.
- B. **Medical Recertifications** - Medical Recertifications are required if an extension of leave is needed. Recertifications may also be required in connection with long-term conditions, but no more than every 30 days, unless there is a change in an employee's medical circumstances or information is received that casts doubt on the reason for the leave.

If an earlier medical certification indicates that leave is needed for more than 30 days, a recertification may not be required until the minimum duration of leave has passed, unless there is a change in the employee's medical circumstances, or information is received casting doubt on the employee's stated reason for the leave. For extended absences, a recertification may be required every six (6) months, even if the minimum duration of leave previously certified has not passed. No second or third opinions are permitted for medical re-certifications.

C. **Certification of Military Family Leave**

- 1. **Qualifying Exigency** - When leave is requested for a qualifying exigency, the employee is required to complete a "Certification of Qualifying Exigency for Military Family Leave" form and furnish appropriate information, as indicated on the form, to the city's absence management provider to support the need for leave. Leave required for a qualifying exigency must be supported by a certification from the employee that sets forth the following information:
 - a. A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document

- confirming appointment with a counselor or school official, or a copy of a bill for services for handling of legal or financial affairs;
- b. The approximate date on which the qualifying exigency commenced or will commence;
 - c. If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;
 - d. If the qualify exigency involves a meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting. If needed, the manager may contact the individuals or entities named in the certification to verify the existence and nature of the qualifying exigency.
 - e. Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.
- 2. Military Caregiver Leave - Military caregiver leave must either be supported by a "Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave" form completed by the appropriate health care provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family. Alternatively, documentation of enrollment in the VA Program of Comprehensive Assistance for family caregivers is sufficient, but the City may require additional information in accordance with the federal regulations.
 - 3. Second and third opinions and re-certifications may be required for military caregiver leave certifications that are completed by health care providers, who are not affiliated with the Department of Defense, Veterans Affairs, and TRICARE.

VIII. DESIGNATION OF FMLA LEAVE

When it has been determined that leave is covered by FMLA, the city's absence management provider is responsible for submitting a "Designation Notice" to the employee within five (5) working days, informing the employee of the number of hours or weeks that will count against the employee's FMLA entitlement, if known. The employee must be informed of any requirement for a Return to Duty form when the FMLA Designation Notice is completed.

If FMLA-qualifying leave is not designated in a timely manner, in certain situations, the leave may be retroactively designated as FMLA leave, provided there was no harm or injury suffered by the employee.

Policies for occupational illnesses or injuries are covered under Section 1202, Occupational Injury and Disease Policies, Procedures and Guidelines. However, leave for serious health conditions resulting from occupational illnesses or injuries shall concurrently be covered by FMLA and Workers' Compensation and shall be documented for FMLA purposes in accordance with Section VIII, "Designation of Leave."

IX. LEAVE AND MEDICAL RECORDS

Individual departments are responsible for entering, designating, and monitoring FMLA leave time in the City's automated payroll/leave accounting system. The city's absence management provider is responsible for reviewing and maintaining all medical documentation including medical certifications and doctor's notes. All records related to an employee's medical condition are strictly confidential and may be discussed only with those who have a bona fide need to know. Additional documentation regarding FMLA leave, such as Notices of Eligibility and Rights and Responsibilities, Designation Notices, etc. will also be maintained by the city's absence management provider in accordance with Virginia Records Retention Guidelines.

X. COMPENSATION WHILE ON FMLA LEAVE

In accordance with the provision of the Unpaid Leaves of Absence policy, an employee must exhaust all accrued paid leave (PPL & PML), or use the maximum amount allowable, before being placed in an unpaid leave status. However, employees who are unable to work due to a work related injury or illness covered by Workers' Compensation shall not use accrued paid leave during such period unless authorized by state law.

Under City policy, when leave is being taken for a personal medical reason, an employee may not charge paid medical leave (PML) if the employee is medically able to perform work that is offered by the City but declines. In these cases, the leave shall be charged to any accrued paid personal leave (PPL) or compensatory leave, or the time will be unpaid if no accrued paid personal leave or compensatory leave remains.

City policy limits the amount of paid medical leave (PML) that can be charged for the birth, adoption or foster care placement of a child as follows:

- **Mother** – Up to eight (8) work weeks of accrued paid medical leave may be charged. Additional accrued paid medical leave may be granted when medically required prior to the birth or beyond the initial eight (8) week period due to incapacity of the mother or medical condition of the child.

- **Father** – Up to two (2) work weeks of accrued paid medical leave may be charged immediately following the birth or hospital release of the child. Additional accrued paid medical leave may be granted if the father's presence is medically required to care for the mother or child.

XI. RETURN TO DUTY

The City may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employee will be informed by the city's absence management provider of any requirement for a Return to Duty form when the FMLA Designation Notice is completed. City policy requires that when an employee is absent for personal medical reasons for more than five (5) days, a Return to Duty certification must be submitted to their direct supervisor upon the employee's return. Return to Duty certifications may also be required for leave of lesser periods. If an employee is taking leave on an intermittent or reduced schedule basis, a Return to Duty certification may be required every 30 days, if there are reasonable safety concerns.

If the completed Return to Duty certification form is not submitted in a timely manner, the employee's return to work may be delayed.

If the Return to Duty certification form indicates the employee is able to perform his/her essential functions, the employee may return to work. If the certification indicates any work restrictions, Human Resources will work with the department to determine if the restrictions can be accommodated. No second or third opinions are permitted for Return to Duty certifications.

XII. JOB PROTECTION RIGHTS/CONTINUATION OF BENEFITS

Upon return from FMLA covered leave, an employee is entitled to return to his/her same or equivalent position, provided the employee is able to perform the essential functions of that position. Job protection rights, as required by FMLA, expire after the equivalent of 12 weeks of FMLA leave have been taken during a 12-month period for any combination of FMLA qualifying reasons (or 26 weeks during a single 12-month period for military caregiver leave). Upon the completion of FMLA covered leave, the City has no obligation to hold an employee's position.


While on FMLA leave, employees will remain eligible for any group insurance benefits under the same conditions as coverage would have been provided if the employee had been actively employed during the entire leave. While in a paid status, the City will continue deducting insurance premiums. If all paid leave is exhausted and the employee remains on leave in an unpaid status, the employee is responsible for paying his/her portion of any insurance premiums. If any portion of an employee's leave will be unpaid, the employee will be contacted by the Department of Human Resources Benefits Division or the city's third-party benefits billing provider to make arrangements to pay any premiums.

FMLA job protection rights do not entitle an employee to any right, benefit, or position of employment other than those to which the employee would have been entitled had the leave not been taken.

If an employee voluntarily terminates his/her employment while taking leave covered by FMLA, the City's FMLA obligations to the employee cease.

Supersedes/Amends: 703, 09/01/16

Approved:



City Manager